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December 12, 2002

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Marlene H. Dortch, Secretary  
Federal Communications Commission  
236 Massachusetts Avenue, NE  
Suite 110  
Washington, DC 20002

**Re: Joint Petition for Expedited Waivers and Supplement to Joint Petition for Expedited Waivers of Nemont Telephone Cooperative, Inc., Missouri Valley Communications, Inc., Reservation Telephone Cooperative, and Citizens Telecommunications Company of North Dakota of the Study Area Boundary Freeze as Codified in Part 36 and Other Waivers of Sections 61.41(c)(2), 69.3(e)(11) and 69.605(c), CC Docket No. 96-45**

Dear Ms. Dortch

In the Joint Petition for Expedited Waivers filed by Nemont Telephone Cooperative, Inc (Nemont), Missouri Valley Communications, Inc (MVCI), Reservation Telephone Cooperative (RTC), and Citizens Telecommunications Company of North Dakota on September 24, 2002, the Petitioners stated that MVCI and RTC each filed an application for certificate of public convenience and necessity with the North Dakota Public Service Commission (NDPSC), in which they asked the NDPSC to state in its final order that it does not object to the grant of the requested study area waiver. The Petitioners also indicated that they would supplement the filing when the NDPSC issued its order approving the state applications.

Accordingly, a copy of the NDPSC orders approving the applications for certificate of public convenience and necessity is attached. Also attached hereto, is a copy of the letter dated December 4, 2002, in which the NDPSC affirmatively states "that it does not object to the request for waiver of the FCC study area rule for the exchanges to be transferred from Citizens Telecommunications Company of North Dakota to Missouri Valley Communications, Inc and Reservation Telephone Cooperative." Please associate these documents with the Joint Petition.

In addition, we wish to inform you of the comments filed in this proceeding by the National Exchange Carrier Association, Inc. (NECA) on December 2, 2002. In its comments,

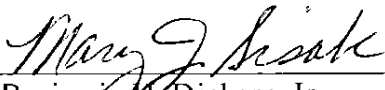
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NECA states that it supports grant of the requested waivers, including the average schedule waiver sought by Nemont and MVCI, and “affirms that the proposed addition of lines to the common line pool will not significantly impact common line pool revenue requirements and will not impose any undue administrative burdens on NECA ~ See, NECA Comments at 4-5

Respectfully submitted,

**NEMONT TELEPHONE COOPERATIVE,  
INC.  
MISSOURI VALLEY COMMUNICATIONS,  
INC.  
RESERVATION TELEPHONE  
COOPERATIVE**

By   
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Attachments

cc: Cara Voth



Public Service Commission  
State of North Dakota

COMMISSIONERS

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Leo M. Reinbold  
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December 4, 2002

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Re: Request for Waivers filed by Citizens Telecommunications Company of North Dakota, Nemont Telephone Cooperative, Inc., Missouri Valley Communications, Inc. and Reservation Telephone Cooperative in Connection with the Sale of Exchanges

Dear Ms. Dortch:


On December 4, 2002, the North Dakota Public Service Commission approved the applications for certificates of public convenience and necessity filed by Missouri Valley Communications, Inc. and Reservation Telephone Cooperative in connection with their purchase of certain exchanges in the State of North Dakota from Citizens Telecommunications Company of North Dakota. It is our understanding that these companies filed a Joint Petition for Expedited Waivers with the FCC on September 24, 2002 and a Supplement to Joint Petition for Expedited Waivers on October 25, 2002, requesting a waiver of certain FCC rules, including the study area rule, in connection with the purchase and sale of these exchanges.

The North Dakota Public Service Commission hereby affirmatively states that it does not object to the request for waiver of the FCC study area rule for the exchanges to be transferred from Citizens Telecommunications Company of North Dakota to Missouri Valley Communications, Inc. and Reservation Telephone Cooperative.

If you have any questions, please contact Jerry Lein at 701 328-1035

Sincerely

  
Anthony T. Clark  
Commissioner

  
Susan E. Wefald  
President

  
Leo M. Reinbold  
Commissioner

STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION

Missouri Valley Communications, Inc.  
Designated Eligible Carrier  
Application

Case No. PU-2779-02-451

Missouri Valley Communications, Inc.  
Local Exchange  
Public Convenience and Necessity

Case No. PU-2779-02-452

FINDINGS ~~OF~~ FACT, CONCLUSIONS OF LAW AND ORDER

December 4, 2002

Appearances

Commissioners Susan E. Wefald and Anthony T. Clark.

Patrick W. Durick, Attorney At Law, 314 E. Thayer Ave., P.O. **Box** 400.  
Bismarck, ND 58502-0400 on behalf of Missouri Valley Communications, Inc.

William W. Binek, Chief Counsel, Public Service Commission, State Capitol,  
600 East Boulevard Avenue, Bismarck, ND 58505-0480 as hearing officer.

Jerry Lein and Mike Diller. Staff Analysts, Public Service Commission, State  
Capitol, Bismarck, ND 58505-0480, on behalf of the Public Service Commission,

Preliminary Statement

On August 23, 2002 Missouri Valley Communications, Inc. (MVCI), a subsidiary of Nemont Telephone Cooperative, Inc. of Scobey, Montana (Nemont) filed an application for a certificate of public convenience and necessity to provide facilities-based incumbent local exchange telecommunications services in the Williston, North Dakota exchange, Case No. PU-2779-02-452. MVCI also requests designation as an Eligible Telecommunications Carrier (ETC) for receiving federal universal service support for the Williston Exchange, Case No. PU-2779-02-451. Incumbent local exchange telecommunications services for the Williston exchange are currently provided by Citizens Telecommunications Company of North Dakota (CTC).

On September 25, 2002 the Commission issued a Notice of Hearing, scheduling a public hearing for October 22, 2002 at 2:00 p.m. CDT in the Williams County

Courthouse, Memorial Room, 205 East Broadway, Williston, North Dakota. The notice identified the following issues to be considered:

1. Fitness and ability of MVCI to provide service.
2. Adequacy of the proposed service.
3. The technical, financial and managerial ability of MVCI to provide service.
4. Qualification of MVCI under the Telecommunications Act of 1996, Section 214 (e) for designation as an ETC eligible to receive federal universal service funding.
5. What ETC universal service support area should be designated for MVCI.

N.D.C.C. section 49-03.1-04 includes two issues not indicated above. They are need for service and the effect on other public utilities providing similar service. **N.D.** Admin. Code section 69-09-05-11(3) provides:

*"In order to implement North Dakota Century Code chapter 49-03.1 consistent with the Telecommunications Act of 1996, issues to be considered in an application for a certificate of public convenience and necessity for a facilities-based provider of telecommunications services are:*

- a. Fitness and ability of the applicant to provide service.*
- b. Adequacy of the proposed service.*
- c. The technical, financial, and managerial ability of the applicant to provide service."*

On October 22, 2002 a public hearing was held as scheduled in the Williams County Courthouse. Several members of the public made public interest comments.

On October 31, 2002 MVCI filed late exhibits 2, 3, 4 and 5.

Having heard and considered this matter, the Commission makes the following:

### **Findings of Fact**

1. MVCI is a subsidiary of Nemont Telephone Cooperative, Inc. of Scobey, Montana. MVCI is authorized to do business in the State of North Dakota.
2. On July 26, 2002 MVCI entered into an agreement with CTC for the purchase of assets relating to the provision of facilities-based incumbent local exchange telecommunications services in the Williston exchange. Upon closing, CTC intends to

cease providing service and MVCI intends to begin providing service in the Williston exchange.

3. All subscribers currently served by CTC in the Williston exchange will be served by MVCI on the closing date of the transaction. CTC presently serves approximately 9,400 access lines in the Williston Exchange. CTC intends to relinquish its ETC designation and certificate of public convenience and necessity for the Williston exchange effective as of the closing date of the transaction.

4. MVCI is a subsidiary of Nemont. Nemont and its subsidiaries, Valley Telecommunications, Inc. and Project Telephone Company, presently provide incumbent local exchange service for approximately 19,000 access lines in forty-seven exchanges in northeast and south-central Montana, northwest North Dakota and north-central Wyoming. Nemont has been in the telecommunications business since 1950 and has an experienced managerial staff. Nemont or its subsidiaries provide a variety of technologically advanced telecommunications services including business and residential access, dial up Internet, ADSL high speed Internet, long distance, cellular service, voice mail, Lifeline/Linkup, enhanced Lifeline, assistance in obtaining E-rate funding for schools, libraries and medical facilities, enhanced 911 and interactive television. We find that MVCI has the fitness and ability to provide adequate service to the Williston exchange.

5. MVCI intends to continue existing services while honoring the existing local rates and extended calling area for the Williston exchange. MVCI intends to honor existing interconnection agreements with exchange carriers and to adopt the intrastate access rates currently used by Nemont for its exchanges in North Dakota.

6. The Rural Telephone Finance Cooperative has issued a conditional commitment to MVCI for a 15-year secured long-term loan of \$20 million and Nemont has agreed to provide \$8.2 million of capital to MVCI for the purchase of the Williston exchange. We find that MVCI is fit, able, and has the technical, financial and managerial ability to provide service for the Williston exchange.

7. The Williston exchange that is the subject of this sale is currently part of CTC's study area for purposes of determining universal service obligations. Both MVCI and CTC request that the Commission notify the FCC that the Commission does not object to the study area changes necessary to remove the Williston exchange from CTC's study area and add it to MVCI's study area.

8. To be designated as an eligible telecommunications carrier, a carrier must: (1) offer the services that are supported by federal universal service support mechanisms, and offer the services designated by the FCC for such federal support mechanisms for schools, libraries, and health care providers; and (2) advertise the availability of such services and the charges therefore using media of general distribution.

9. For telecommunications customers, the services designated by the FCC for support by Universal service support mechanisms include voice grade access to the public switched network, local usage, dual tone multi-frequency signaling or its functional equivalent, single-party service or its functional equivalent, access to emergency services, access to operator services, access to interexchange service, access to directory assistance and toll limitation for qualifying low-income consumers.

10. For schools and libraries, the service designated by the FCC for support by universal support mechanisms include all items listed on the Eligible Services List of the Schools and Libraries Support Mechanism of the Universal Service Administrative Company dated October 18, 2002. For health care providers, the services supported by universal service support mechanisms include any telecommunications service used primarily for the provision of health care.

11. MVCI will offer all services that are supported by the federal universal service support mechanisms and will advertise the availability of and charges for those services using media of general distribution throughout the Williston exchange.

12. MVCI's Lifeline and Link Up offerings will continue to meet the requirements established by the FCC and the North Dakota Lifeline Plan and Link Up Plan in the Williston Exchange.

13. We find that that MVCI is qualified under the Telecommunications Act of 1996, Section 214 (e) for designation as an ETC eligible to receive federal universal service funding.

From the foregoing Findings of Fact, the Commission makes the following:

### **Conclusions of Law**

1. The Commission has jurisdiction over the applicant and over the subject matter of these applications under Title 49 of the North Dakota Century Code.

2. MVCI is fit, able, and has the technical, financial and managerial ability to provide service for the Williston exchange.

3. MVCI's proposed service is adequate.

4. MVCI meets the federal requirements for designation as an eligible telecommunications carrier in the Williston exchange.

From the foregoing Findings of Fact and Conclusions of Law, the Commission makes the following

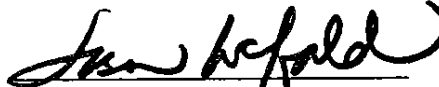
## Order

### The Commission Orders:

1. The application of Missouri Valley Communications, Inc. for a certificate of public convenience and necessity to provide incumbent local exchange telecommunications services in the Williston exchange area is approved, effective with the date that the asset acquisition transaction is complete. A certificate of public convenience and necessity will be issued upon notification by the applicants that the transaction is complete.
2. Missouri Valley Communications, Inc.'s application to be designated as an eligible telecommunications carrier is granted, and MVCI is designated as an eligible telecommunications carrier in the Williston exchange area, effective with the issuance of a certificate of public convenience and necessity and receipt of any required Part 36 study area waivers from the FCC.
3. Citizens Telecommunications Company of North Dakota's certificates of public convenience and necessity for the Williston exchange shall be relinquished and cancelled effective with the issuance to MVCI of a new certificate of public convenience and necessity for the Williston exchange.
4. Citizens Telecommunications Company of North Dakota will no longer be designated as an ETC for the Williston exchange effective upon Citizen's relinquishing its certificate of public convenience and necessity for the Williston exchange and receipt of any required Part 36 study area waivers from the FCC.

### PUBLIC SERVICE COMMISSION

  
Anthony T. Clark  
Commissioner

  
Susan E. Werald  
President

  
Leo M. Reinbold  
Commissioner



## STATE OF NORTH DAKOTA

## PUBLIC SERVICE COMMISSION

Reservation Telephone Cooperative  
Designated Eligible Carrier  
Application

Case No. PU-427-02-453

Reservation Telephone Cooperative  
Local Exchange  
Public Convenience and Necessity

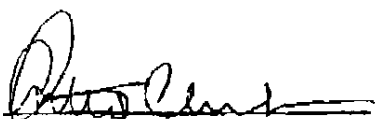
Case No. PU-427-02-454


## ORDER


December 4, 2002

Having considered the evidence of record in this proceeding, the Public Service Commission adopts the Hearing Officer's November 26, 2002 Recommended Findings of Fact, Conclusions of Law and Order.

## PUBLIC SERVICE COMMISSION

  
Anthony T. Clark  
Commissioner

  
Susan E. Wefald  
President

  
Leo M. Reinhold  
Commissioner



**STATE OF NORTH DAKOTA**  
**PUBLIC SERVICE COMMISSION**

**Reservation Telephone Cooperative  
Designated Eligible Carrier  
Application**

**Case No. PU-427-02-453**

**Reservation Telephone Cooperative  
Local Exchange  
Public Convenience and Necessity**

**Case No. PU-427-02-454**

**RECOMMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER**

**November 26, 2002**

**Appearances**

**William W. Binek**, Chief Counsel, Public Service Commission, State Capitol, Bismarck, North Dakota 58505-0480, Substantive Hearing Officer

**Patrick W. Durick, Attorney at Law**, Pearce & Durick, 314 East Thayer Avenue, Bismarck, North Dakota 58502, on behalf of Reservation Telephone Cooperative.

**Jerry Lein and Mike Diller**, Staff Analysts, Public Service Commission, State Capitol, Bismarck, ND 58505-0480, on behalf of the Public Service Commission.

**Preliminary Statement**

On August 23, 2002 Reservation Telephone Cooperative ("RTC") filed an application for a certificate of public convenience and necessity to provide facilities-based incumbent local exchange telecommunications services in the Watford City and Alexander exchange, Case No. PU-427-02-453. RTC also requests designation as an Eligible Telecommunications Carrier ("ETC") for receiving federal universal Service support for the Watford City and Alexander exchanges, Case No. PU-427-02-454. Incumbent local exchange telecommunications services for the Watford City and Alexander exchanges are currently provided by Citizens Telecommunications Company of North Dakota ("CTC").

On September 25, 2002 the Commission issued a Notice of Public Hearing for Case Nos. PU-427-02-453 and PU-427-02-454 for October 22, 2002 at 10:00 a.m. CDT at the Watford City Hall, Heritage Room, 213 2<sup>nd</sup> Street NE, Watford City, North Dakota. The notice identified the following issues to be considered:

1. Fitness and ability of RTC to provide **service**.
2. **Adequacy of the proposed service.**
3. **The technical, financial and managerial ability of RTC to provide service.**
4. Qualification of **RTC** under the **Telecommunications Act of 1996, Section 214 (e)** for designation as an ETC eligible to receive federal universal service funding.
5. What ETC universal **service** support area should be designated for RTC.

N.D.C.C. section **49-03.1-04** includes two **issues** not indicated above. They are need for **service** and the **effect** on other public utilities providing similar **service**. N.D. Admin. Code section **69-09-05-11(3)** provides:

*"In order to implement North Dakota Century Code chapter 49-03.1 consisted with the Telecommunications Act of 1996, issues to be considered in an application for a certificate of public convenience and necessity for a facilities-based provider of telecommunications services are:*

- a. **Fitness and ability of the applicant to provide service.**
- b. **Adequacy of the proposed service.**
- c. **The technical, financial, and managerial ability of the applicant to provide service."**

On October 18, 2002 National Information Solutions Cooperative filed an affidavit of Support for the application of RTC in Case Nos, PU-427-02-453 and PU-427-02-454.

On October 22, 2002 at 10:00 a.m. CDT, a public hearing was held at the Watford City Hall, Heritage Room, 213 2<sup>nd</sup> Street NE, Watford City, ND. Several members of the public made public interest comments.

On October 31, 2002 RTC filed late exhibits 3 and 4, Enumeration of ETC Service and Proposed Waiver letter, respectively

Having heard and considered this matter, the Hearing Officer makes the following:

### Findings of Fact

1. RTC is a North Dakota business corporation, with its business offices located in Parishall, North Dakota. RTC is engaged in the business of providing local exchange telecommunications at various locations within the State of North Dakota.

2. On July 26, 2002 RTC entered into an agreement with CTC for the purchase of assets relating to the provision of local exchange telecommunications services, exchange access and other telecommunications services in the Watford City and Alexander exchanges. Upon closing, CTC intends to cease providing service and RTC intends to begin providing service in the Watford City and Alexander exchanges.

3. All subscribers currently served by CTC in the Watford City and Alexander exchanges will be served by RTC on the closing date of the transaction. CTC presently serves approximately 1,113 access lines in the Watford City exchange and 236 access lines in the Alexander exchange. CTC intends to relinquish its ETC designation and certificate of public convenience and necessity for the Watford City and Alexander exchanges effective as of the closing date of the transaction.

4. RTC presently provides telecommunications services to approximately 7,823 customers in eighteen exchanges in twelve communities spread over 7,000 square miles in north-central North Dakota. RTC has an experienced managerial staff and a seasoned and stable Board of Directors from the service areas that it serves. RTC provides a variety of technologically advanced telecommunications services to its subscribers including Call Waiting, Call Forwarding, Three Way Calling, Call Forward on Busy, Speed Dial 8 and Speed Dial 30, Cancel Call Waiting, Call Screening, Selective Call Forwarding, Special Call Acceptance and Priority Ringing, Caller ID, Voice Mail, Toll Restriction, Distinctive Ringing, Second Line, North Dakota Long Distance ("NDLD"), NDLD Prepaid Calling Cards, NDLD Toll Free Numbers and Calling Cards, Alarm Systems, Business Phone Systems, Internet. Paging, Retail Phone Equipment and Supplies, Telecommunication Equipment Leasing and RTC Telephone Cooperative Gift Certificates. RTC offers dial up internet access to all of its subscribers and presently offers Digital Subscriber Lines (InstaNet) to some of its customers. RTC plans to expand the availability of this DSL service as its plant is upgraded. RTC also offers cable television services in Arnegard, New Town, Parshall, Plaza, Makoti and Rider and paging services in Keene, New Town and Parshall. RTC's website [www.RTC.coop](http://www.RTC.coop) contains public service materials, such as the community calendar, which lists all activities in all of the towns served by RTC. The Hearing Officer finds that RTC has the fitness and ability to provide adequate service to the Watford City and Alexander exchanges.

5. RTC intends to honor the existing local rates and the extended calling area for the Watford City and Alexander exchanges. RTC intends to honor existing interconnection agreements with Competitive Local Exchanges and wireless providers and to adopt the intrastate-access rates currently used by RTC for its exchanges in North Dakota.

6. CoBank has issued a conditional loan commitment to RTC, and the proceeds of the loan as well as the present assets and operating margins of RTC provide ample assets for the purchase and operation of the Watford city and Alexander exchanges and the repayment of the loan. The Hearing Officer finds that RTC is fit, able, and has the

technical, financial and managerial **ability** to provide service for the Watford City and Alexander exchanges.

10. The Watford City and Alexander exchanges that **are the subject of this sale** are currently part of CTC's study area for purposes of **determining universal service obligations**. Both RTC and CTC **request** that the Commission notify the FCC that the Commission does not object to the study area changes necessary to remove the Watford City and Alexander exchanges from CTC's study area and to add those exchanges to RTC's study area.

E. To be designated as an eligible telecommunications carrier, a carrier must: (1) offer the services that are supported by **federal universal service support** mechanisms, and offer the services designated by the FCC for such federal support mechanisms for schools, libraries, and health care providers; and (2) advertise the availability of such services and the charges therefore using media of general distribution.

9. For telecommunications customers, the services designated by the FCC for support by Universal service support mechanisms include voice grade access to the public switched network, local usage, dual tone multi-frequency signaling or its functional equivalent, single-party service or its functional equivalent, access to emergency services, access to operator services, access to interexchange service, access to directory assistance and toll limitation for qualifying low-income consumers.

10. For schools and libraries, the service designated by the FCC for support by universal support mechanisms include all items listed on the Eligible Services List of the Schools and Libraries Support Mechanism of the Universal Service Administrative Company dated October 18, 2002. For health care providers, the services supported by universal service support mechanisms include any telecommunications service that is used primarily for the provision of health care.

11. RTC affirms it will offer all services that are supported by the federal universal service support mechanisms and will advertise the availability of and charges for those services using media of general distribution throughout the Watford City and Alexander exchanges.

12. RTC affirms that its Lifeline and Link Up offerings will continue to meet the requirements established by the FCC and the North Dakota Lifeline Plan and Link Up Plan in the Watford City and Alexander exchanges.

13. The Hearing Officer finds that RTC is qualified under the Telecommunications Act of 1996, Section 214 (e) for designation as an ETC eligible to receive federal universal service funding,

From the foregoing Findings of Fact, the Hearing Officer makes the following:

### Conclusions of Law

1. The Commission ~~has~~ jurisdiction over the applicant ~~and over the subject matter of these~~ applications under Title 49 ~~of the North Dakota Century Code~~.

2. ATC is fit, able, and ~~has~~ the ~~technical, financial and~~ managerial ~~ability~~ to provide service for ~~the Watford City and Alexander~~ exchanges.

3. RTC's proposed service ~~for Watford~~ City and Alexander is adequate

4. RTC ~~meets~~ the federal requirements ~~for~~ designation as an ~~eligible telecommunications carrier~~ in the Watford City and Alexander exchanges.

From the foregoing Findings of Fact and Conclusions of Law, the Hearing Officer makes the following:

### Order

#### The Commission Orders:

1. The application of Reservation Telephone Cooperative for a ~~certificate~~ of public convenience and necessity to provide ~~incumbent~~ local exchange telecommunications services in the Watford City and Alexander exchanges area is **approved**, effective with the date that the ~~asset acquisition transaction is complete~~. A certificate of public convenience and necessity will be **issued** upon notification, ~~by the applicants that the transaction is complete~~.

2. Reservation Telephone Cooperative's application to ~~expand~~ its **designated eligible carrier status is granted**, and RTC is designated as an eligible telecommunications carrier in the Watford City and Alexander exchange areas. **effective** with the issuance of a certificate of public convenience and necessity and receipt of any required Part 36 study area **waives** from the **FCC**.

3. Citizens Telecommunications Company of North Dakota's certificates of public convenience and necessity for ~~the Watford City and Alexander exchanges~~ shall be **relinquished** and cancelled effective with the issuance to RTC of a new certificate of public convenience and necessity for the **Watford City and Alexander** exchanges.

4. Citizens Telecommunications Company of North Dakota **will** no longer be **designated** as an ETC for **the Watford City and Alexander exchanges** effective upon